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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,603

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Ronald Rietman

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

CLAWSON, STEPHEN J

ART UNIT

PAPER NUMBER

4172

MAIL DATE

DELIVERY MODE

12/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,603	<b>Applicant(s)</b> RIETMAN, RONALD	
	<b>Examiner</b> STEPHEN CLAWSON	<b>Art Unit</b> 4172	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claim 12 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A "computer program product" is non-functional descriptive material and is, per se, an abstract idea. Therefore, the "computer program product" claimed is non-statutory and unpatentable. **See MPEP**

#### **2106.01**

2. Claims 13-14 are rejected under 35 U.S.C. 101 because their claims embrace or overlap two statutory classes of invention. 35. U.S.C. 101 sets forth statutory classes of invention in the alternative only. Claim 13 depends upon claim 1 and therefore, claims both a method and an apparatus. This is not permissible. Claim 14 depends up claim 13 which depends upon claim 1, and likewise, claims both a method and an apparatus. These two claims embrace two statutory classes of invention and do not fall under the inventive types defined in 35 U.S.C. 101. **See MPEP 2173.05(p)**

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Claim 1 and claim 6, which are depended upon by all remaining claims, claim a result as set forth in the one claimed step of the method and not a process or method that obtains this result. The preamble is not a part of the claim. Attempts to claim a process without setting forth any steps involved in the process give rise to indefiniteness under 35 U.S.C. 112, 2nd. **See MPEP 2173.05(q)**

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Elements critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Claim 1 and claim 6, which are depended upon by all remaining claims, claim a result as set forth in the one claimed step of the method and not a process or method that obtains this result. The preamble is not a part of the claim. The essential critical elements of how to perform this invention by one skilled in the art are missing from the claims.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 6 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Wah (U.S. Pat No. 4,630,264).

Regarding claims 1 & 6, Wah teaches a method of controlling a window in a contention resolution protocol for a shared channel between at least three contending stations, **(Wah, Col. 1 line 30-40; Wah discloses a bus network with three-state collision-detection mechanism where it is possible to detect whether zero, one or more than one station has contended for the channel.)** according to which a station contends for a channel over a number of steps by generating a number,  $x$ , within an interval with a lower bound,  $l$ , initially equal to an initial lower bound,  $L$ , and an upper bound,  $h$ , initially equal to an initial upper bound,  $U$ ; and by trying to access the channel if the number,  $x$ , falls within a window with the lower bound,  $l$ , and an upper window bound,  $w$ ; a station which generated a number outside the window is eliminated from contending for the channel; whereas a station which generated a number within the window continues to contend for the channel; the method continues until one station is singled out to be determined winning the contention; the method comprises a step of:

- setting the upper window bound,  $w$ , to set a window within which the expected number of stations that will try to access the channel is approximately equal to 1. **(Wah Col. 3, line 52 –Col 5. line 2)**

Regarding claim 11, Wah teaches a method wherein a station is arranged to maintain values representing the bounds of the window and a generated number, and wherein the station evaluates whether the generated number falls within the window and obtains information indicates that the channel is idle or a collision has occurred and if the generated number falls within the window at least one of the window bounds is changed as set forth in claim 1 and the station tries to communicate on the channel.

**(Wah Col. 3, line 52 –Col 5. line 2)**

Regarding claim 12, Wah teaches a computer program product comprising code means for performing the method according to claim 1 when executed on a computer.

**(Wah Col. 3, line 52 –Col 5. line 2)**

Regarding claim 13, Wah discloses an apparatus comprising a contention resolution processor which is arranged to operate according to the method set forth in claim 1. **(Wah Col. 29)**

Regarding claim 14, Wah discloses an apparatus according to claim 13, comprising transmission and receiving means arranged to communicate via a channel in a wireless medium. **(Wah Col 1. line 10-15; Wah teaches contention resolution on a single shared bus. Examiner interprets this single shared bus to include both wired and wireless networks.)**

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHEN CLAWSON whose telephone number is (571)270-7498. The examiner can normally be reached on M-F 7:30-5:00 pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis West can be reached on 571-272-7859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/STEPHEN CLAWSON/  
Examiner, Art Unit 4172

/Lewis G. West/  
Supervisory Patent Examiner, Art Unit 4172